

and 3 have been amended to clarify this aspect of the invention. Claim 2 recites that the seal is formed by applying heat or pressure for a prescribed dwell period. Claim 3 is amended to recite that the top seal is formed by applying heat and pressure for a prescribed dwell period.

Accordingly, withdrawal of the objection to claim 3 is respectfully requested.

Claims 1, 5-6, and 8-10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ramsey et al., U.S. Patent No. 6,030,122.

Applicants have submitted herewith a Declaration under 37 C.F.R. § 1.131 signed by the inventors in order to overcome the reference to Ramsey. In particular, attached to the Rule 131 Declaration are copies of pages from the inventors' notebook that were produced prior to March 6, 1998, the filing date of Ramsey '122. As explained in more detail in the Declaration, the notes attached to the Declaration reflect that the inventors had conceived of the invention as recited in, e.g., independent claims 1 and 17 of this application, prior to March 6, 1998.

In particular, demonstrating that the inventors had conceived of a pinch-grip openable package, the first page of (handwritten) notes attached to the Declaration state:

CONCEPT: M. DIERL & M. JURGOVAN  
FOR PINCH GRIP, EQUALIZE INTERNAL AND EXTERNAL  
OPENING FORCES TO ALLOW FOR BAG OPENING FROM  
THE BOTTOM (INTERNAL (PRODUCT) SIDE WITHOUT  
STRIPPING OFF ZIPPER ON UNSUPPORTED/HINGED SIDE

Rule 131 Declaration, ¶ 4.

Moreover, the sheets attached to the handwritten notes show drawings illustrating various configuration options (OPTION 1-OPTION 5) that were conceived and evaluated. The drawings show configurations substantially similar to drawings of this application (see, e.g., Figs 3-5 of this

application). The first page of the notes makes specific "Reference" to "Standard Film Option 3 on attached deck" (See encircled note on left side of page) . Referring, for example, to the drawing illustrating OPTION 3, on which reference characters corresponding to the reference characters used in this application have been added, the drawing shows the zipper [40] including male member [40-1] and female member [40-2], a male projection [43-1], a female socket [43-2], a left flange [41-1], a right flange [41-2], central sections [S] behind the socket [43-2] and the projection [43-1], and sealant layers [C].

Also, the five options outlined reflect configurations that support the claims of this application. With respect to OPTION 3, the following features of the bag, and their respective sizes, are listed progressing from the top of the bag to the bottom::

**STANDARD MATL (OPTION 3)**

- 1/2" seal
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal

In the parlance of Frito-Lay, employer of the inventors at the time of invention and subsidiary of the assignee of this application, the term "Standard Material" meant, at the time of development of the subject matter of this application (and still means today), a laminated film having outer and inner propylene layers with an intervening polyethylene layer. When a seal is formed with such a film, the opposing inner layers of the front and back walls are sealed together, and, when the seal is broken, the inner layers delaminate from the outer layers, so that the outer

appearance of the bag is substantially intact. This is consistent with the film description provided in the present application, at for example, page 11, third full paragraph.

To demonstrate that the attached notes support independent claim 1, claim 1 is set forth in bold below, with the support for each recited element set forth in brackets below the corresponding claim element.

**In combination:**

**a) a flexible package having**

**a elastomeric front wall and an elastomeric rear wall;**

[OPTION 3 was snack food bag formed from "STANDARD MATL" (material), which, as described above, is a "flexible packaging having [an] elastomeric front wall and an elastomeric rear wall".]

**said front wall and said rear wall being sealed together at a top seal;**

[A "seal" at the top of the bag is a listed feature of OPTION 3.]

**a first zipper part attached to an inside surface of said front wall and having a first engagement member facing said rear wall;**

[A "zipper" is a listed feature of OPTION 3 below the seal. The figure illustrates that the zipper includes a male (i.e., a first engaging) part.]

**a second zipper part attached to an inside surface of said rear wall and having a second engagement member facing said front wall;**

[A "zipper" is a listed feature of OPTION 3 below the seal. The figure illustrates that the zipper includes a female (i.e., a second engaging) part.]

**said first and second engagement members being engaged together;**

[The figure associated with OPTION 3 illustrates that the first and second engaging members are engaged with one another]

**said top seal being manually pinch-grip openable and said first and second engagement members being manually pinch-grip openable under a pinch-grip pulling force applied to said front and rear walls below said engagement members;**

[The attached hand written notes, as quoted above, make reference to pinch-grip opening from the product side, which would be below the engagement members (i.e., below the zipper). Furthermore, within the OPTION 3 description, under the heading "POSITIVES", it is stated that the bag of OPTION 3 permits "Pinch grip opening (usual for potato chips)". It is also stated that "No perfling" (i.e., no perforating) is necessary to permit the pinch-grip opening.]

**said front and rear walls having a sufficient strength to resist tearing and deformation under the application of said pinch-grip pulling force during pinch-grip opening; and**

[This is a reference to the relative sealing strength of the zipper as compared to the strength of the bag wall material to which the zipper components are secured. If the strength of the zipper is greater than the strength of the bag wall material, upon attempting to open the bag by a pinch-grip method, one or the other of the zipper components will tear away from its respective bag wall, rather than the two zipper components disengaging from one another. If one or the other zipper component tears away from its respective wall, the zipper can no longer be used to re-seal the bag. Thus, it was recognized that the bag wall material must have a strength greater than the holding strength of the interengaged zipper components, so that it could withstand pinch grip opening. This is reflected in the statement quoted above.]

**b) a food product stored inside said package below said first and second engagement members.**

[The food product is stored in the "bag (body)" below the "zipper", i.e., there is no intervening seal between the zipper and the storage portion of the bag.]

To demonstrate that the attached notes support independent claim 17, independent claim 17, as amended above, is set forth in bold below, with the support for each recited element set forth in brackets below the corresponding claim element.

**In combination:**

a) **a flexible package, including**

**front and rear walls, said front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer,**

[A snack food bag, such as the one that had conceived, inherently includes front and rear walls, as reflected in the separate male and female portions of the zipper to be attached to different respective walls of the bag. As explained above, the "standard material" of which, e.g., the bag of OPTION 3 was to be made, was (and still is) a laminated plastic film having at least one inner sealable layer and at least one outer wall layer.]

**a bottom seal formed between lower sides of said front and rear walls;**

[The list of features of the bag of OPTION 3, as quoted above, includes a "bottom seal" below the "bag (body)" portion.]

**a top seal formed between upper sides of said front and rear walls, said top seal including a seal between said inner sealable layers;**

[The list of features of the bag of OPTION 3, as quoted above, includes a "seal" as the first (i.e., topmost) feature on the list. As explained above, a seal using the "standard material" of which, e.g., the bag of OPTION 3 was to be made, would constitute a seal between the respective inner layers of the front and rear walls.]

**a zipper located within said package proximate said top seal, said zipper having a first zipper part having a first engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;**

[A "zipper" is a listed feature of OPTION 3 below the seal. The figure associated with OPTION 3 illustrates that the zipper includes a male (i.e., a first engaging) part and that the male part has a widened base with three points of sealant: a central sealant section S and two sealant sections C.]

**said zipper also having a second zipper part having a second engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;**

[A "zipper" is a listed feature of OPTION 3 below the seal. The figure associated with OPTION 3 illustrates that the zipper includes a female (i.e., a second engaging) part and that the female part has a widened base with two points of sealant: a central sealant section S and one sealant section C.]

**said first engagement member being engaged with said second engagement member;**

[The figure associated with OPTION 3 illustrates that the first and second engagement members are engaged with one another]

**said at least two points of sealant on said first zipper part being sealed to said inner layer of one of said front and rear walls and said at least two points of sealant on said second zipper part being sealed to the inner layer of the other of said front and rear walls;**

[As shown in the figure associated with OPTION 3, one of the zipper components is attached to one of the walls of the package, and the other component is attached to the other wall.]

**said seal between said inner sealable layers being openable by de-lamination and said engagement between said engagement members of said zipper being disengaged upon the application of a predetermined pinch-grip pulling force; and**

[As explained above, a seal between the inner layers of a standard material is broken by delamination of the inner seals. Furthermore, within the OPTION 3 description, under the heading "POSITIVES", it is stated that the bag of OPTION 3 permits "Pinch grip opening (usual for potato chips)". It is also stated that "No perfing" (i.e., no perforating) is necessary to permit the pinch-grip opening.]

**b) food product stored within said package between said closed zipper and said bottom seal.**

[The food product is stored in the "bag (body)" below the "zipper" (i.e., there is no intervening seal between the zipper and the storage portion of the bag) and above the "bottom seal".]

Moreover, from the period prior to March 6, 1998 until May 15, 1998, the application date of the parent application (09/079,382, now U.S. Patent No. 5,972,396) from which this divisional application claims priority, the inventors worked diligently with in-house and outside patent counsel in order to prepare and file a patent application directed to the subject matter set forth in the notebook pages attached to the Declaration. (See Declaration ¶¶11-18)

Thus, the Declaration filed herewith establishes that Ramsey '122 is not a proper reference under 35 U.S.C. § 102(e) because it was not "filed in the United States before the invention" of the subject matter of this application.

Accordingly, applicants respectfully request withdrawal of the rejection of claims 1, 5-6, and 8-10 under § 102(e) based upon Ramsey '122.

With respect to the rejection of claims 2-4, 7, 13-21, and 23-26 under 35 U.S.C. § 103(a) over Ramsey '122 in view of Thompson et al., U.S. Patent No. 5,224,779, the applicants respectfully submit that with the removal of Ramsey '122 as a prior art reference against this application, the subject matter of the rejected claims is not anticipated nor rendered obvious by the teachings of Thompson '779.

Claims 2-4, 7, and 13-16 depend from independent claim 1 and are believed to be allowable as being dependent upon an allowable base claim, there being nothing in the disclosure of Thompson '779 to render claim 1 obvious. For example, Thompson '779 does not suggest or disclose a package having a top seal that is manually pinch grip openable or first and second engagement members that are manually pinch grip openable under a pinch grip pulling force applied to the front and rear walls of the package below the engagement members, and front and rear walls having sufficient strength to resist tearing and deformation under the application of the pinch grip pulling force during pinch grip opening.

In fact, the Thompson reference actually indicates: "[T]he package has a hermetic, inner seal which is an easy open or peel seal [16]. The peel seal is . . . opened with digital pull-apart forces which may be a continuation of the forces used to open the reclosable seal." Col. 2, lines 8-12. In Thompson '779, the peel seal is the "inner" seal -- inside the zipper portion. See col. 3, lines 20-30, Figures 1-4. Thus, Thompson '779 expressly describes opening the package from the outside (i.e., the consumer side) inward to the product side. This is exactly opposite to the pinch grip opening described in this application and recited in the claims.

Accordingly, it is respectfully submitted that independent claim 1 and claims 2-4, 7, and 13-16 depending therefrom are allowable.

With the removal of Ramsey as a prior art reference against this application, it is respectfully submitted that independent claim 17 and dependent claims 18-21 and 23-26 are allowable over the teachings of Thompson '779. For example, as explained above, Thompson '779 does not disclose a package having a seal between inner sealable layers that is openable by delamination and wherein engagement between the engagement members of the zipper is disengaged upon the application of a predetermined pinch grip pulling force. Accordingly, it is respectfully submitted that independent claim 17 and claims 18-21 and 23-26 depending therefrom are allowable.

Thus, applicants respectfully request withdrawal of the rejections of claim 2-4, 7, 13-21, and 23-26 under § 103 under Ramsey in view of Thompson.

With respect to the rejection of claims 11-12 under 35 U.S.C. § 103(a) as being unpatentable over Ramsey in view of Cadwallader (5,542,766), it is respectfully submitted that with the removal of Ramsey '122 as a reference, dependent claims 11-12, depending from independent claim 1, are not rendered obvious by the teachings of Cadwallader '766. Cadwallader '766 is cited merely for its disclosure of a container of snack food chips, such as potato- or corn-based chips. It has no disclosure of, for example, first and second zipper parts attached to an inside surface of the front and rear walls of a package, a top seal of a package that is manually pinch grip openable, or first and second engagement members that are manually pinch grip

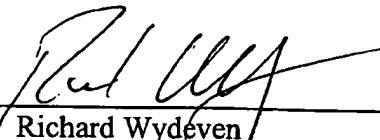
openable. Accordingly, it is respectfully submitted that dependent claims 11 and 12 are allowable, and withdrawal of the rejection of claims 11-12 is respectfully requested.

Finally, with respect to the rejection of claim 22 under § 103(a) over Ramsey and Thompson and further in view of Cadwallader, it is respectfully submitted that with the removal of Ramsey as a prior art reference against this application, claim 22, which depends from independent claim 17, is not rendered obvious by the teachings of Thompson '779 and Cadwallader '766 alone. As explained above, there is no teaching in either Thompson '779 or Cadwallader '766 of all of the features of the combination recited in claim 17, such as, for example, the seal between the inner sealable layers being openable by delamination and engagement between the engagement members of the zipper being disengaged upon the application of a predetermined pinch grip pulling force. Accordingly, it is respectfully submitted that dependent claim 22 is allowable, and withdrawal of the rejection of claim 22 is respectfully requested.

All objections and rejections having been addressed, it is respectfully submitted that the present application is now in a condition for allowance and a notice to that effect is earnestly requested.

Respectfully submitted,

By:



Richard Wydeven  
Attorney for Applicant  
Registration No. 39,881  
ROTHWELL, FIGG, ERNST & MANBECK, p.c.  
Suite 701-E, 555 13th Street, N.W.  
Washington, D.C. 20004  
Telephone: (202) 783-6040